

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 50 of 1981

with

SECOND APPEAL No 51 of 1981

Date of decision: 16-6-1998

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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VITHALBHAI RANCHHODJI PATEL

Versus

STATE OF GUJARAT

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Appearance:

1. Second Appeal No. 50 of 1981  
Mr. S. C. Shah for MR SN SHELAT for Appellant  
Mr. Mukesh Patel, AGP, for Respondent No. 1  
None present for Respondent No. 2

2. Second Appeal No 51 of 1981

Mr. S.C Shah for Mr. S.N.Shelat for Appellants  
Mr. Mukesh Patel , AGP, for Respondent No. 1  
None present for Respondent No. 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/06/98

ORAL JUDGEMENT

Learned counsel for the appellants submitted that in both these second appeals identical questions of law are involved and as such they maybe heard and decided together. To this prayer of the learned counsel for the appellants, the learned counsel for the respondents has no objection. Hence both these appeals are being heard together and are being disposed of by this common judgment and order. It is necessary to mention here that so far as Regular Civil Appeals No.115 and 116 of 1977, wherefrom these two second appeals arise, they were decided by the first appellate court by common judgment and order.

Heard the learned counsel for the parties.

2. It is not in dispute that the land in question in both these second appeals were acquired by the State Government under the provisions of the Land Acquisition Act, 1894. Learned counsel for the appellants does not dispute that at no point of time the State Government has de-acquired these lands by issuing notification under section 48 of the aforesaid Act. The appellants original plaintiffs filed civil suit for recovery of possession of the land in dispute on the ground that the purpose for which these lands were acquired has already come to an end and on further ground the Mamlatdar has sent letter to them to take possession of the land back after making payment of the amount as demanded. That amount has been paid by the appellant, but still possession has not been restored and hence the plaintiffs filed the civil suit.

3. Manifold contentions have been raised by the learned counsel for the appellants challenging the decision of the courts below. However, I am not required to deal with all those points in view of the fact that these lands have not been de-acquired by the State Government by issuing notification under section 48 of the aforesaid Act the Mamlatdar was not competent to send

the letter to the appellants asking them to take back possession of the lands on payment of certain amount, and that letter will not give any cause of action to the appellants for filing the suit for possession. Even if the land acquired has not been put to use for which it was acquired, and it has been put to another use, it will not give any right to the appellant-plaintiffs to file suit for possession. Once the land has been acquired, it continues to remain as acquired land. So long as it is not de-acquired by the State Government it can be put to another use, whatsoever, by the State Government and the holder of the said land cannot make any grievance. He is only entitled to receive compensation and that would have been paid. Taking into consideration the totality of the facts of the case, the appellants have no legal right whatsoever to claim possession of the land back, on the ground that the purpose for which the land was acquired no more survives, unless the land is de-acquired by the Government.

4. Whatever be the ground given by the courts below to dismiss the suit is not material. The appellant-plaintiffs have no right to claim possession of the land back in absence of any order of the State Government to de-acquire the land, and hence the suit itself was not maintainable.

5. In the result both these appeals fail and the same are dismissed. Interim relief, if any, granted earlier by this court stands vacated. No order as to costs.

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